STATE OF ARIZONA FILED

# STATE OF ARIZONA

OCT 4 1995

DEPAR	TRACALE	but her	15100-1	73 A D L M P
Die	TMENT	0	II) PU	HANGI
UV	/ /	1/		

In the Matter of	)	Docket No.	95-155
DWIGHT WASHBURN SMITH,	į	ORDER	
Applicant.	)		

On September 13, 1995, a hearing took place in the above-referenced matter. Assistant Attorney General Gerrie Switzer appeared on behalf of the Arizona Department of Insurance ("Department"). Applicant Dwight Washburn Smith ("Mr. Smith") appeared in propria persona.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Lewis D. Kowal prepared the following Findings of Fact, Conclusions of Law, and Order for consideration and approval by the Director of the Department (the "Director"). The Director adopts and enters the following Findings of Fact, Conclusions of Law and enters the following Order:

## FINDINGS OF FACT

- 1. On June 6, 1995, Mr. Smith submitted to the Department an application for an individual life and disability insurance agent license ("the Application").
- 2. On July 11, 1995, the Department denied the Application.
- 3. On July 13, 1995, Mr. Smith filed with the Department a timely request for hearing.
- 4. In this proceeding, Mr. Smith had the burden of proof to demonstrate his qualifications to have the Application

3

5

granted and for the issuance of an individual life and disability insurance agent license.

- 5. In Section F, Questions numbered 3 and 4d, Mr. Smith disclosed that he had a civil judgment entered against him in Garfield County, Colorado, Case Number 90 CV 179 for fraud or misrepresentation.
- 6. On November 25, 1991 in the case of Gary C.

  Marshall v. James J. Kenefick, Dwight Smith and Vending

  Exchange, Inc., District Court, Garfield County, State of

  Colorado, Case Number 90 CV 179 ("Marshall v. Smith"), it was

  determined that: a) the actions of Mr. Smith as to Mr. Marshall

  were determined to be fraudulent; b) the actions of Mr. Smith

  violated Colorado Deceptive Trade Practices Act as defined in

  C.R.S. 6-1-105(1)(a), (b) and (r); and c) Mr. Smith and Mr.

  Kenefick acting as a joint venture are legally responsible for

  the misrepresentations of the other joint venturer.
- 7. Mr. Smith was unsuccessful in his appeal of the Findings, Conclusions and Judgment in <u>Marshall v. Smith</u>.
- 8. Other than Mr. Smith's testimony, no evidence was presented at the September 13, 1995 hearing as to Mr. Smith's character.
- 9. Based upon the above, Mr. Smith failed to prove that he qualifies for the issuance of an insurance license.

#### CONCLUSIONS OF LAW

- 1. Mr. Smith received notice of this proceeding as prescribed by A.R.S.  $\S\S20-163$  and 41-1061.
- 2. The Director has jurisdiction over this matter pursuant to A.R.S. §§20-161 and 20-290.

21

22

23

24

25

26

27

28

- The Findings, Conclusions and Judgment in Marshall 3. v. Smith constitutes a record of dishonesty in business or financial matters, within the meaning of A.R.S. §20-290(B)(2).
- Mr. Smith did not meet his burden of proof and failed to establish his qualifications for the issuance of an insurance license.

# ORDER

IT IS ORDERED:

Denying the June 6, 1995 application for an individual life and disability insurance agent license submitted to the Department by Applicant Dwight Washburn Smith.

> EFFECTIVE this 4 thday of October, 1995.

> > CHRIS HERSTAM

Director of Insurance

LEWIS D. KOWAL

Chief Administrative Law Judge

# NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Administrative Law Division within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §20-166.

COPY of the foregoing mailed/delivered this 4th day of October, 1995, to: Charles R. Cohen, Deputy Director Gregory Y. Harris, Executive Assistant Director Maureen Catalioto, Supervisor, Licensing Department of Insurance 2910 N. 44th Street, Suite 210 Phoenix, Arizona 85018 Gerrie Switzer Assistant Attorney General 1275 W. Washington Phoenix, Arizona 85007 Dwight W. Smith 19638 North 37th Way Phoenix, Arizona 85024 Chris Crawford